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JUN 17 1991

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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National Exchange Carrier )  
Association, Inc. Request )

RM 7736

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In the Matter of  
National Exchange Carrier  
Association, Inc. Request  
for Rule Change Concerning the  
Composition of its  
Board of Directors

RM 7736

NATIONAL ASSOCIATION OF  
REGULATORY UTILITY COMMISSIONERS  
INITIAL COMMENTS

Pursuant to Sections 1.41, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.41, 1.415, & 1.419 (1991), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully requests that the Commission grant the National Exchange Carrier Association, Inc.'s ("NECA") May 24, 1991 petition for a rulemaking ("Petition") to amend 47 C.F.R. Section 69.602 to add two outside directors to the NECA Board effective January 1, 1992. In support of its comments, NARUC states as follows:

## I.

### NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. Its members include the governmental bodies charged with regulating carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's mission is to, inter alia, improve the quality and effectiveness of public utility regulation in America.

NARUC's State and territorial members regulate the telecommunications common carriers within their respective borders. They have the obligation to assure that telecommunications services and facilities required by the public convenience and necessity are established, and that service is furnished at rates that are just and reasonable.

The potential for, and apparent ability to, manipulate the NECA settlement process demonstrated by the FCC's recent audit could seriously impact upon NARUC members' ability to adhere to their respective mandates to serve the public interest.

## II.

### COMMENTS

NECA is a non-profit corporation created by the FCC in 1983 to develop interstate access tariffs and administer the national

interstate pools in conjunction with the federal access charge program for all Local Exchange Carriers (LECs) that elect to participate. See, 47 C.F.R. Section 69.601 (1990); See, also, MTS-WATS Market Structure, Third Report and Order, 93 FCC 2nd 241 (Access Charge Order), on reconsideration, 97 FCC 2nd 682 (1983), 97 FCC 2nd 834, 99 FCC 2nd 708 (1984), affirmed in principle part sub non., National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir 1984), cert. denied, 469 U.S. 1227 (1985). NECA has a membership of over 1400 local exchange carriers which are divided into three groups; (a) Subset I - the Bell Operating Companies, (b) Subset II - other exchange carriers with revenues of \$ 40 million or more, and (c) Subset III - all remaining LECs. See, 47 C.F.R. Section 69.602(a) (1991). NECA's Board of Directors is composed of six joint representatives of Subsets I and II, and nine representatives of Subset III. 47 C.F.R. Section 69.602(b)&(c) (1991).

NECA prepares access charge tariffs and collects and distributes access charge revenues for participating member carriers. On a monthly basis, NECA receives revenue, expense and investment figures from the LECs and computes each LEC's monthly share of the cost pools in which it participates. Initially the LECs only supply estimates of this data, but in later months, they provide the actual monthly figures. Under NECA procedures, the LECs have up to 24 months following the current data month to submit such adjustments.

The NARUC Communications Committee Finance and Accounting Task Force investigated NECA activities and found that there may be a financial incentive for NECA pooling companies to engage in improper reporting. In addition, the FCC's Common Carrier Bureau recently conducted an audit focusing on major adjustments LECs reported to the Common Line pool during the period of October, November and December, 1988 settlements cycles. The auditors found that some Subset I LECs engaged in manipulative and erroneous reporting that influenced the Common Line earnings in 1988. As a result, the FCC issued a November 9, 1990 letter of reprimand to the NECA Board of Directors and notices of apparent liability to four Bell Operating Companies for apparent accounting rule violations. See, November 9, 1990 Letter From the Commission to Lawrence C. Ware, Chairman of the Board of Directors of NECA (Docket No. FCC 90-387 - 38055).

Both NARUC's and the FCC's findings point up the potential problems that can arise as long as NECA's current board of directors consists solely of representatives who have a financial interest in the procedures and operations of NECA separate from any participation in a particular interstate pool by their respective companies.

NARUC has already sought FCC action to address this problem. On January 27, 1991, NARUC filed a **"PETITION FOR RULEMAKING ADDRESSING ADMINISTRATION OF FEDERAL ACCESS CHARGE PROGRAM-RELATED**

LEC INTERSTATE POOL", asking the FCC to initiate a notice of inquiry and rulemaking to "...determine how best to administer the national interstate pools in conjunction with the federal access charge program for all Local Exchange Carriers (LECs) that elect to participate and other support programs to further the goal of universal service." See, **NARUC Resolution Regarding NECA**, Sponsored by NARUC's Communications Committee, Adopted by the Executive Committee November 15, 1990, NARUC Bulletin No. 47-1990 at 11 (November 19, 1990).

In its petition, NARUC specifically encouraged "...the FCC to proceed with its proposal to appoint non-LEC individuals to the NECA Board of Directors to provide an independent view and a moderating effect on NECA deliberations." NARUC Petition at 5.

Accordingly, NARUC believes the appointment of two independent directors to the NECA board is a necessary first step towards restoring public confidence in and assuring appropriate oversight of NECA's activities.

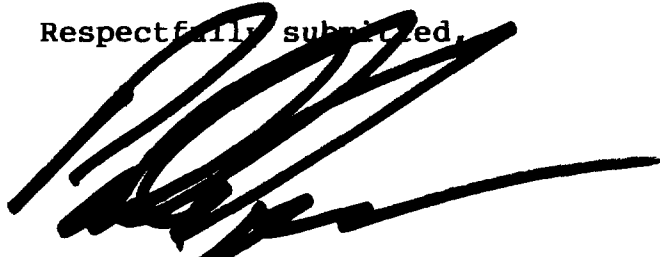
#### IV.

#### CONCLUSION

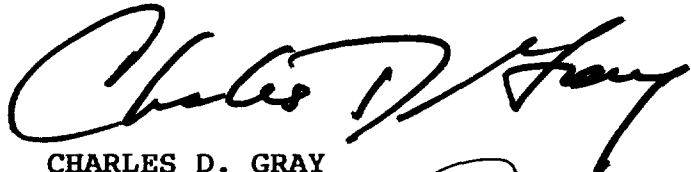
Because of the potential financial incentives, the FCC determinations of improper activities, and the interstate-intrastate pool administration cost differentials, NARUC believes

the appointment of two outside independent directors is a necessary prerequisite to assuring appropriate oversight of NECA's activities. Accordingly, NARUC urges the FCC to grant NECA's petition.

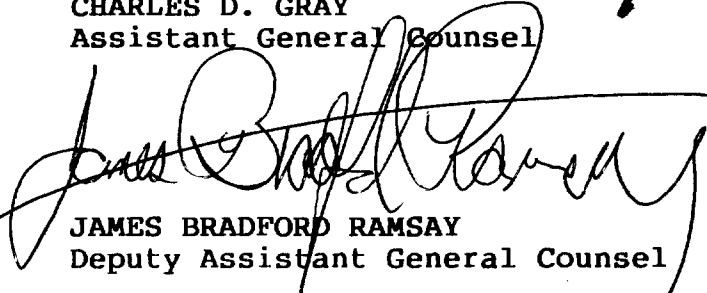
Respectfully submitted,



PAUL ROGERS  
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June 16, 1991

**In the Matter of National Exchange Carrier Association, Inc.  
Request for Rule Change Concerning the Composition of its Board of  
Directors**

**Docket No. RM 7736**

**APPENDIX A**

**NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONER'S**

**NOVEMBER 15, 1990**

**RESOLUTION REGARDING NECA**



**RESOLVED,** That, given the potential adverse financial incentives, the determination of improper activities and the difference in the costs of interstate and State pool administration, the FCC is requested to establish a Notice of Inquiry and Proposed Rulemaking to determine how best to administer the national interstate pools in conjunction with the federal access charge program for all Local Exchange Carriers (LECs) that elect to participate and other support programs to further the goal of universal service, e.g., Universal Service Fund, Lifeline and Link-Up.

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Sponsored by the Communications Committee  
Adopted by the Executive Committee November 15, 1990  
NARUC Bulletin No. 47-1990 at 11 (November 19, 1990).

In the Matter of National Exchange Carrier Association, Inc.  
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Directors

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CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing

**In the Matter of National Exchange Carrier Association, Inc.  
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Directors**

**Docket No. RM 7736**

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